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EXAMINER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

09/695,216

**Applicant(s)**

LAUCKHART ET AL.

**Examiner**

JOHN MACILWINEN

**Art Unit**

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 6 and 70-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6 and 70-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GA-06)  
Paper No(s)/Mail Date 6/6/2011
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant's arguments filed 06/06/2011 have been fully considered and are persuasive. However, after further consideration, a new grounds of rejection has been made in view of Gupta (US 6,487,538 B1).

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, 4 and 70 - 80 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Regarding claim 1, said claim is directed to a "system ... comprising" ... "an estimating device", "a prober", and a "statistical summarization system".

The broadest reasonable interpretation in the art regarding Applicant's claimed system and its component device, prober and summarization system includes a software system comprising software components.

Applicant's Specification describes the system as being operable in a software-only embodiment on page 7, lines 19 – 20, which recite:

*"Any program ... can perform the functions that the present invention requires..."*

Applicant's Specification continues to describe a software-only embodiment on page 40, lines 11 - 14, which recite:

*"the software components, in accordance with the present invention, that*

*analyze traffic data ... sample advertising data from that traffic data, and generate summarization data ...".*

Though page 40 recites the system operating in an environment including memory and a hardware processor, said memory and processor are not recited in the current claim language.

Applicant's claimed system thus may also be reasonably considered to be directed solely to non-statutory software.

5. Claims 2, 4 and 76 – 80, which depend on the above addressed claim 1, further claim the above addressed system but add no other limitations that require statutory subject matter. Thus the reasoning given above is similarly applied to dependent claims 2, 4 and 76 – 80.

6. Regarding claim 70, said claim is directed to a "tangible machine readable medium". The broadest reasonable interpretation of a claim drawn to such a medium includes transitory propagating signals per se in view of the ordinary and customary meaning of said computer readable media. Claim 70 may be amended to narrow the claim to cover only statutory embodiments by adding the limitation "non-transitory" to the claim.

7. Regarding claims 71 – 75, said claims further specify the machine readable medium of claim 70, while adding no limitations requiring statutory subject matter. Thus the logic applied above to claim 70 is applied similarly to claims 71 – 75.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter for the reasons given below in the 35 USC 112 written description rejection. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

***Claim Rejections - 35 USC § 112***

- 8.** The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 9.** Claims 75, 80 and 85 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

- 10.** For example, claim 75 recites

*"determining a rotation rate ... by dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files;*

*"determining the number of times that the first content object has been display to visits by multiplying the estimate ... by the rotation rate."*

- 11.** Claims 80 and 85 recite limitations corresponding to those of claim 75.

**12.** Though pages 16 and 21 - 22 of Applicant's Specification recite multiplication and division of gathered data, language providing adequate support for the specific formulation above does not appear in Applicant's Specification or priority documents.

**13.** The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**14.** Claim 4 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites further limitations directed to "the sampling device". There is a lack of antecedent basis for said sampling device. Furthermore, said lack of antecedent basis makes the relationship between the recited "sampling device" and the system of claim 1 unclear.

**15.** In order to perform a complete examination, the above claims have been interpreted broadly.

### ***Claim Objections***

**16.** Claims 75, 80 and 85 objected to because of the following informalities: each of said claims recites the language:

*"determining the number of times that the first content object has been **display to visits**..."* (emphasis added).

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

**17.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**18.** Claims 1, 2, 6, 70, 71, 72, 74, 76, 77, 79, 81, 82 and 84 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta (US 6,487,538 B1).

**19.** Regarding claim 1, Gupta shows a system (*Figs. 1, 3*) for estimating the prevalence of digital content on a network, the system comprising:

an estimating device to determine an estimate of a number of times that a webpage has been accessed (*e.g., a proxy, col. 17 lines 12 – 24, col. 17 lines 44 - 46*);

a prober to repeatedly request (*a “subset of page views”, col. 17 line 43*) the webpage and, in response, receive content files (*running the described sampling auditing scheme; col. 17 lines 40 - 44*); and

a statistical summarization system (*“...claims ... are the statistically examined”, col. 17 lines 45 - 46*) to determine a number of times that a first content object is included in the content files (*“advertisement hit-rate”, col. 17 lines 43 - 44*), determine a total number of times that the webpage has been requested (*“subset of page views” for which the “auditing scheme” is executed; col. 17 lines 40 - 46*), and estimate the

number of times that the first content object has been displayed to visitors of the webpage based on the number of times that the first content object was included in the content files, the total number of times that the webpage was requested, and the estimate of the number of times that the webpage has been accessed (*col. 17 lines 40 – 47 describing utilizing the “hit-rate” and “repeat rate” in conjunction with a sampled “subset of page views” and utilizing a statistical examination of these factors in comparison with a proxy’s claims to “determine if [claimed] rates are likely or not”*).

**20.** Regarding claim 2, Gupta shows wherein the estimating device is to receive the estimate of the number of times that the webpage has been accessed from at least one proxy cache server (*col. 6 lines 35 - 61, col. 7 lines 40 - 43*).

**21.** Regarding claim 6, Gupta shows a method of estimating the prevalence of digital content on a network, the method comprising:

receiving an estimate of a number of times that a webpage has been accessed (*e.g., information from a log of a proxy, col. 17 lines 12 – 24, col. 17 lines 44 - 46*);

repeatedly requesting (*a “subset of page views”, col. 17 line 43*) the webpage and, in response, receive content files (*running the described sampling auditing scheme; col. 17 lines 40 - 44*); and

determine a number of times that a first content object is included in the content files (*“advertisement hit-rate”, col. 17 lines 43 - 44*);

determining a total number of times that the webpage has been requested (*“subset of page views” for which the “auditing scheme” is executed; col. 17 lines 40 - 46*);



estimating the number of times that the first content object has been displayed to visitors of the webpage based on the number of times that the first content object was included in the content files, the total number of times that the webpage was requested, and the estimate of the number of times that the webpage has been accessed (*col. 17 lines 40 – 47 describing utilizing the “hit-rate” and “repeat rate” in conjunction with a sampled “subset of page views” and utilizing a statistical examination of these factors in comparison with a proxy’s claims to “determine if [claimed] rates are likely or not”*).

**22.** Regarding claim 70, Gupta shows a tangible machine readable medium storing instructions, that when executed, cause a machine to at least;

receive an estimate of a number of times that a webpage has been accessed (*e.g., information from a log of a proxy, col. 17 lines 12 – 24, col. 17 lines 44 - 46*);

repeatedly request (a “subset of page views”, *col. 17 line 43*) the webpage and, in response, receive content files (*running the described sampling auditing scheme; col. 17 lines 40 - 44*); and

determine a number of times that a first content object is included in the content files (*“advertisement hit-rate”, col. 17 lines 43 - 44*);

determine a total number of times that the webpage has been requested (*“subset of page views” for which the “auditing scheme” is executed; col. 17 lines 40 - 46*);

estimate the number of times that the first content object has been displayed to visitors of the webpage based on the number of times that the first content object was included in the content files, the total number of times that the webpage was requested,

and the estimate of the number of times that the webpage has been accessed (*col. 17 lines 40 – 47 describing utilizing the “hit-rate” and “repeat rate” in conjunction with a sampled “subset of page views” and utilizing a statistical examination of these factors in comparison with a proxy’s claims to “determine if [claimed] rates are likely or not”*).

**23.** Regarding claim 71, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).

**24.** Regarding claim 72, Gupta shows wherein the instructions stored on the machine readable medium are executed by an advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).

**25.** Regarding claim 74, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).

**26.** Regarding claim 76, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).

**27.** Regarding claim 77, Gupta shows wherein the system is an advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).

**28.** Regarding claim 79, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).

**29.** Regarding claim 81, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).

- 30.** Regarding claim 82, Gupta shows wherein the method is performed by an advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).
- 31.** Regarding claim 84, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).

***Claim Rejections - 35 USC § 103***

- 32.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 33.** Claims 4, 73, 78 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Chen (US 2003/0163370 A1).

- 34.** Regarding claim 4, Gupta shows: claim 1.

Gupta does not show: an extractor to locate a fragment of the web page that includes the first content object; and

a classifier to perform a structural analysis of the fragment to classify the digital content.

Chen shows: an extractor to locate a fragment of the web page that includes the first content object (*[64,78-80]*); and

a classifier to perform a structural analysis of the fragment to classify the digital content (*[64,78-80]*).

It would have been obvious to one of ordinary skill in the art at the time of the

invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

**35.** Regarding claim 73, Gupta shows claim 70.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (*Fig. 4, [37,42,45,51-53]*).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

**36.** Regarding claim 78, Gupta shows claim 70.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (*Fig. 4, [37,42,45,51-53]*).

It would have been obvious to one of ordinary skill in the art at the time of the

invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

**37.** Regarding claim 83, Gupta shows claim 6.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (*Fig. 4, [37,42,45,51-53]*).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

**38.** Claims 75, 80 and 85 rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Alberts (5,937,392).

**39.** Regarding claim 75, Gupta shows claim 70, including determining a rotation rate for the content object ("*repeat rate*"; *col. 17 lines 39 - 46*), and

determining a number of times that the first content object has been display to visits ("*hit-count information*" *col. 17 lines 30 - 46*).

Gupta does not show where the above data can be ascertained utilizing: dividing

the total number of times that the webpage was requested by the number of times that the first content object was included in the content files;

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*);

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-know mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

**40.** Regarding claim 80, Gupta shows claim 1, including determining a rotation rate for the content object (*"repeat rate"; col. 17 lines 39 - 46*), and

determining a number of times that the first content object has been display to visits (*"hit-count information" col. 17 lines 30 - 46*).

Gupta does not show where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that

the first content object was included in the content files;

    multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

    Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*);

    multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*).

    It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-know mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

**41.** Regarding claim 85, Gupta shows claim 6, including determining a rotation rate for the content object (*“repeat rate”; col. 17 lines 39 - 46*), and

    determining a number of times that the first content object has been display to visits (*“hit-count information” col. 17 lines 30 - 46*).

    Gupta does not show where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files;

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*);

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-know mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. MacIlwain whose telephone number is (571) 272-9686. The examiner can normally be reached on M-F 7:30AM - 5:00PM EST; off alternate Fridays.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess, can be reached on (571) 272 - 3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN MACILWINEN/  
Examiner, Art Unit 2442

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